XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(57)

आदेश पत्रक

मामला क्रमांक Crmp. 49/07 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

[Single Bench: Hon'ble Mr. Justice Dhirendra Mishra]

APPLICANTS

1. Kanhaiya Lal, S/o Shri Pyarelal, By Caste Barai, aged about 56 years.
2. Mangal, S/o Shri Pyarelal, By Caste Barai, aged about 54 years.

Both residence of Rajapara, Kanker, Police Station & Dist. Kanker (C.G.)

Vs

RESPONDENTS

1. Rajkumar, S/o Shri Laxmilal, By Caste Barai, aged about 49 years, Resident of Manjhaapara, Kanker, Thana & Dist. Kanker (Died on 7.1.2007) through Legal Representatives.

1 (A) Smt. Munni, Wd/o Late Rajkumar, By Caste Barai, aged about 43 years.

1 (B) Raja, S/o Late Rajkumar, By Caste Barai, aged about 20 years.

1 (C) Chhotu, S/o Late Rajkumar, By Caste Barai, aged about 18 years.

All residents of Village Bebarti, Thana Kanker & Dist. Kanker (C.G.)

2. State of Chhattisgarh through Collector/Magistrate, North Bastar, Dist. Kanker (C.G.)

17.10.2007

Mr. R.S. Patel, Advocate for the applicants.

Mr. Prakash Tiwari, Advocate for the respondents.

I.A. No.2 for permission to bring on record the legal representatives of respondent No.1 & I.A. No.3 for taking additional documents on record are allowed.

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The applicants have preferred this petition under Section 482 of the Cr.P.C. against the order dated 14.12.2006 passed in Criminal Revision No.20/06 whereby the Sessions Judge, North Bastar, Kanker has rejected the criminal revision of the applicants herein and confirmed the order passed by the Sub Divisional Magistrate, Kanker whereby deciding the application under Section 145 of Cr.P.C. of the applicants herein it has been held that the non-applicants were in possession of the disputed land two month's before the passing of preliminary order.

The only argument advanced by learned counsel for the applicant is that respondent No.1-Rajkumar in his statement on oath before the Sub Divisional Magistrate had admitted that disputed land fell in the share of applicant No.1-Kanhaiya and on the basis of said partition the parties are in possession and doing the agricultural operations. However, both the courts below have not considered the above admission for the purposes of deciding the possession over the disputed land and have erroneously held the non-applicants to be in possession of the disputed land. It is also argued that the application for mutation preferred by the non-applicants was rejected by the Tehsildar vide order of Annexure P-5.

On the other hand, learned counsel for the respondents argued that there is no dispute that the disputed land was in possession of Prembai, who transferred the same vide registered sale deed dated

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24.1.1992 and since then the non-applicants are in possession. The application under Section 145 of Cr.P.C. was filed by the applicants on 18.11.2002 and even before that the order of partition dated 30.6.1993 was passed by the Tehsildar. The preliminary order was also passed on 22.11.2002. So far as the admission of respondent No.1-Rajkumar in his statement is concerned, the land fell into the share of Kanhaiya is a matter of record and any admission on the basis of said partition is of no consequence, as the same refers to a period after the dispute arose between the parties.

I have heard learned counsel for the parties.

Learned Sessions Judge has dismissed the criminal revision by recording a finding that from perusal of the revenue records it appears that the disputed land fell in the share of the applicants. However, even before the partition, land in question was transferred by Prembai to the respondents on 24.1.1992 though the application for mutation was rejected vide order dated 26.4.2002. From the statement of witnesses of both the parties it is clear that in the relevant year both the parties had sown paddy over the disputed land, however, subsequent agricultural operations were done by the respondents, which stands un-rebutted and on the basis of above evidence the order of Sub Divisional Magistrate has been confirmed wherein the respondents have been held to be in possession immediately two months' before the preliminary order.

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	-५- After going through the impugned order, which has been passed on the basis of concurrent finding of fact by both the courts below, I am of the considered opinion that there is no illegality or infirmity in the impugned order, which calls for interference in exercise of Section 482 of the Cr.P.C. In the result, the petition has no substance, the same is liable to be dismissed and it is accordingly dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

[पीछे देखिये